IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1663 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNILKUMAR @ KARAN RAMA SHANKER SINGH & ANOTHER
Versus
THE STATE OF GUJARAT

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Appearance :

MR PD BHATE, ADDL. PUBLIC PROSECUTOR for respondent.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 05/09/2007

ORAL JUDGMENT

Heard Mr. P.D. Bhate, learned Additional Public

Prosecutor for the respondent State.

The present appeal is preferred by original accused No. 2 and 3 assailing the legality and validity of conviction and sentence recorded against them by learned Additional Sessions Judge, Valsad on 18.08.04 in Sessions Case No. 342 of 2002. Both the appellants, along with another accused namely Salim @ Mahesh Safruddin Keshvani were prosecuted for offences punishable under section 397, 120.B and 34 of the Indian Penal Code and also under section 25 (1)(c) of the Arms Act. At the conclusion of the trial, accused No.1, Salim @ Mahesh Safruddin Keshvani has been acquitted but the learned trial Judge found that accused No. 2 and 3 have committed offences for which they were charged and they have been sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.1000/- each and in default of payment of fine, simple imprisonment for 3 months.

Mr. Sunil C. Patel, learned advocate for the appellants is not present. Earlier also, when this appeal was listed and called out for final hearing, Mr. Sunil C Patel did not remain present before the Court. The appeal being very old and the accused persons being not enlarged on bail, the Court was keen to hear the appeal at the

earliest. However, on account of non-appearance of the advocate for the appellants, the hearing could not be undertaken. Meanwhile, the Court inquired from the jail authorities about the period of imprisonment already undergone by the appellants and as per the report, the accused have undergone substantive punishment of 5 Years 7 Months and 17 days as on 18.07.2007. As per the settled legal position, this being a criminal appeal, is required to be disposed of on its own merits and the same cannot be dismissed for want of prosecution. Therefore, this appeal has been decided with the active assistance of learned Additional Public Prosecutor, Mr. P.D. Bhate appearing for the respondent State.

I have carefully gone through the record and proceedings including the complaint, documentary and oral evidence recorded by the trial Court and the judgment and order. Firstly, I would like to state basic facts of the present case.

A complaint came to be registered by Malabhai Virabhai Aahir on 01.12.99. It is alleged in the complaint that on the date of the incident, at about 7.45 PM, when Kalubhai and Alshibhai were serving at the petrol pump, two persons arrived at the petrol pump on a

motor bike, entered into the office of the petrol pump and one of them gave a slap to the complainant. Thereafter, a country made pistol, popularly known as 'tamancha', was pointed at him and pulled out the drawer of the table and picked up the cash which was lying in the drawer. One of the accused had also fired from the 'tamancha' and thereafter both fled away on the motor bike. The motor bike was identified as Hero Honda make.

Mr. Bhate has taken me through the oral as well as documentary evidence led during the trial as also to the judgment discussing the relevant part of the evidence. It is submitted by Mr. Bhate that the reasons recorded by the trial Judge and sound and no patent illegality has been committed while appreciating the evidence – either oral or documentary. He also submitted that there is no material infirmity in the investigation carried out. However, in response to a query raised by the Court, Mr. Bhate, learned Additional Public Prosecutor has fairly conceded that the learned trial Judge ought to have recorded conviction of both the accused for the offences punishable under section 397 read with section 34 of Indian Penal Code. Recording of acquittal of one of the accused make the case of the prosecution doubtful so far as the charge under section 120.B, IPC, is concerned. As

the accused persons have not been asked to undergo imprisonment independently for the offences punishable under section 120.B, IPC, the ultimate finding of imposing rigorous imprisonment for 7 years and fine of Rs.1000/- each may not be altered.

It is rightly argued by Mr. Bhate that if the Court is of the view that the reasons assigned by the learned Sessions judge are sound and good reasons and any of the probability that was pointed out by the defence counsel during the course of cross examination of witnesses examined are not capable of carving out a probable defence, then the Court can dismiss the appeal saying that there is no merit in the appeal and the reasons recorded by the learned trial Judge holding the accused persons guilty being legal and valid, are upheld.

On appreciating the evidence and the submissions made by learned APP Mr. Bhate, the Court is impressed by the following facts that have emerged from the evidence led by the prosecution:-

[i]. The evidence of complainant Malabhai Virabhai Aahir is trustworthy and he had ample opportunity and time to witness the entire

events. It was not totally dark. The place of incident being a petrol pump, it was possible for the trial Judge to infer that there must be sufficient light. So, therefore is no reason to discard the evidence of the complainant. The sole evidence of the complainant is sufficient to link the accused with the crime.

[ii]. There is no reason for the complainant to implicate both the accused persons in the crime as there is no history of enmity between the complainant and the accused persons.

[iii]. The complainant Malabhai had identified both the accused persons in the court at the time when his deposition was recorded, and this is not a case of identifying the accused for the first time in the Court because this witness had identified both the accused persons during the T.I. Parade arranged by the investigating agency.

[iv]. There is no reason to disbelieve the T.I. Parade and the evidence led by the witness who have been examined to prove the T.I. Parade

panchnama.

[v]. PW Alshi Samant was present at the petrol pump and he being a person serving in the petrol pump, was a natural witness. His presence at the spot of the incident has not been dislodged by the defence counsel. This witness has proved that there was sufficient light and he had ample opportunity to identify the accused persons. This witness has also identified both the accused persons, i.e. the present appellants in the Court as well as during the T.I. Parade.

[vi]. One another witness, Kalubhai, who was also present, has satisfactorily proved that he was present at the petrol pump and both the accused had entered the office with a country made pistol [tamancha] and while pulling the drawer of the table out, they had pointed the 'tamancha' at the complainant and the currency notes were taken out by them and put in the pockets of the jacket that they had put on. He has also proved and corroborated the say of the complainant that one of the accused also fired

from the 'tamancha'.

When the evidence of these three witness are corroborated, the basic story placed by the prosecution is satisfactorily proved and there are no material infirmities or contradictions in their evidence and the trial judge has obviously accepted the evidence as convincing and cogent piece of evidence.

It is not necessary to discuss the rest of the reasons assigned by the learned trial Judge. When the Court is in agreement with the submissions made by the learned Additional Public Prosecutor, Mr.Bhate, that there is no illegality or perversity in the findings, the appeal is required to be dismissed.

In the result, adopting the reasons assigned by the trial Judge and in view of the discussions that have been made in the foregoing paragraphs, the conviction recorded by the learned trial Judge so far as offence punishable under section 397 read with section 34 is hereby upheld. However, the conviction recorded under section 120.B is not found valid on account of inadequacy of evidence. Therefore,the conviction under section 120.B recorded by the learned trial Judge is hereby quashed and set aside.

The substantive sentence imposed by the learned trial Judge under section 397 read with sec. 34, IPC, is also upheld.

The present appeal is accordingly dismissed.

[C.K.BUCH, J.]

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